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SENATE BILL 32

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carlos R. Cisneros

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO TAXATION; ALLOWING LAND GRANTS OPERATING AS
POLITICAL SUBDIVISIONS OF THE STATE TO BE ELIGIBLE FOR TAX
CREDITS AVAILABLE FOR CERTAIN CONVEYANCES OF REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.10 NMSA 1978 (being Laws 2003,
Chapter 331, Section 7, as amended) is amended to read:

"7-2-18.10. TAX CREDIT--CERTAIN CONVEYANCES OF REAL
PROPERTY.--

A. There shall be allowed as a credit against the
tax liability imposed by the Income Tax Act an amount equal to
fifty percent of the fair market value of land or interest in
land that is conveyed for the purpose of open space, natural
resource or biodiversity conservation, agricultural
preservation or watershed or historic preservation as an

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1 unconditional donation in perpetuity by the landowner or
2 taxpayer to a public or private conservation agency eligible to
3 hold the land and interests therein for conservation or
4 preservation purposes. The fair market value of qualified
5 donations made pursuant to this section shall be substantiated
6 by a "qualified appraisal" prepared by a "qualified appraiser",
7 as those terms are defined under applicable federal laws and
8 regulations governing charitable contributions.

9 B. The amount of the credit that may be claimed by
10 a taxpayer shall not exceed one hundred thousand dollars
11 (\$100,000) for a conveyance made prior to January 1, 2008 and
12 shall not exceed two hundred fifty thousand dollars (\$250,000)
13 for a conveyance made on or after that date. In addition, in a
14 taxable year, the credit used may not exceed the amount of
15 individual income tax otherwise due. A portion of the credit
16 that is unused in a taxable year may be carried over for a
17 maximum of twenty consecutive taxable years following the
18 taxable year in which the credit originated until fully
19 expended. A taxpayer may claim only one tax credit per taxable
20 year.

21 C. Qualified donations shall include the conveyance
22 in perpetuity of a fee interest in real property or a less-
23 than-fee interest in real property, such as a conservation
24 restriction, preservation restriction, agricultural
25 preservation restriction or watershed preservation restriction,

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1 pursuant to the Land Use Easement Act and provided that the
2 less-than-fee interest qualifies as a charitable contribution
3 deduction under Section 170(h) of the Internal Revenue Code.
4 Dedications of land for open space for the purpose of
5 fulfilling density requirements to obtain subdivision or
6 building permits shall not be considered as qualified donations
7 pursuant to the Land Conservation Incentives Act.

8 D. Qualified donations shall be eligible for the
9 tax credit if the donations are made to the state of New
10 Mexico, a political subdivision thereof or a charitable
11 organization described in Section 501(c)(3) of the Internal
12 Revenue Code and that meets the requirements of Section
13 170(h)(3) of that code.

14 E. To be eligible for treatment as qualified
15 donations under this section, land or interests in lands must
16 be certified by the secretary of energy, minerals and natural
17 resources as fulfilling the purposes as set forth in Section
18 75-9-2 NMSA 1978. The use and protection of the lands, or
19 interests therein, for open space, natural area protection,
20 biodiversity habitat conservation, land preservation,
21 agricultural preservation, historic preservation or similar use
22 or purpose of the property shall be assured in perpetuity.

23 F. A taxpayer may apply for certification of
24 eligibility for the tax credit provided by this section from
25 the energy, minerals and natural resources department. If the

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1 energy, minerals and natural resources department determines
2 that the application meets the requirements of this section and
3 that the property conveyed will not adversely affect the
4 property rights of contiguous landowners, it shall issue a
5 certificate of eligibility to the taxpayer, which shall include
6 a calculation of the maximum amount of tax credit for which the
7 taxpayer would be eligible. The energy, minerals and natural
8 resources department may issue rules governing the procedure
9 for administering the provisions of this subsection.

10 G. To receive a credit pursuant to this section, a
11 person shall apply to the taxation and revenue department on
12 forms and in the manner prescribed by the department. The
13 application shall include a certificate of eligibility issued
14 by the energy, minerals and natural resources department
15 pursuant to Subsection F of this section. If all of the
16 requirements of this section have been complied with, the
17 taxation and revenue department shall issue to the applicant a
18 document granting the tax credit. The document shall be
19 numbered for identification and declare its date of issuance
20 and the amount of the tax credit allowed for the qualified
21 donation made pursuant to this section.

22 H. The tax credit represented by a document issued
23 pursuant to Subsection G of this section for a conveyance made
24 on or after January 1, 2008, or an increment of that tax
25 credit, may be sold, exchanged or otherwise transferred and may

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1 be carried forward for a period of twenty taxable years
2 following the taxable year in which the credit originated until
3 fully expended. A tax credit or increment of a tax credit may
4 only be transferred once. The credit may be transferred to any
5 taxpayer. A taxpayer to whom a credit has been transferred may
6 use the credit for the taxable year in which the transfer
7 occurred and unused amounts may be carried forward to
8 succeeding taxable years, but in no event may the transferred
9 credit be used more than twenty years after it was originally
10 issued.

11 I. A tax credit issued pursuant to this section
12 shall be transferred through a qualified intermediary. The
13 qualified intermediary shall, by means of a sworn notarized
14 statement, notify the taxation and revenue department of the
15 transfer and of the date of the transfer within ten days of the
16 transfer. Credits shall only be transferred in increments of
17 ten thousand dollars (\$10,000) or more. The qualified
18 intermediary shall keep an account of the credits and have the
19 authority to issue sub-numbers registered with the taxation and
20 revenue department and traceable to the original credit.

21 J. If a charitable deduction is claimed on the
22 taxpayer's federal income tax for any contribution for which
23 the credit provided by this section is claimed, the taxpayer's
24 itemized deductions for New Mexico income tax shall be reduced
25 by the amount of the deduction for the contribution in order to

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1 determine the New Mexico taxable income of the taxpayer.

2 K. For the purposes of this section:

3 (1) "qualified intermediary" does not include
4 a person who has been previously convicted of a felony, who has
5 had a professional license revoked, who is engaged in the
6 practice defined in Section 61-28B-3 NMSA 1978 and who is
7 identified in Section 61-29-2 NMSA 1978, and does not include
8 any entity owned wholly or in part or employing any of the
9 foregoing persons; and

10 (2) "taxpayer" means a citizen or resident of
11 the United States, a domestic partnership, a limited liability
12 company, a domestic corporation, an estate, including a foreign
13 estate, a land grant-merced controlled and governed as a
14 political subdivision of the state or a trust."

15 Section 2. Section 7-2A-8.9 NMSA 1978 (being Laws 2003,
16 Chapter 331, Section 8, as amended) is amended to read:

17 "7-2A-8.9. TAX CREDIT--CERTAIN CONVEYANCES OF REAL
18 PROPERTY.--

19 A. There shall be allowed as a credit against the
20 tax liability imposed by the Corporate Income and Franchise Tax
21 Act an amount equal to fifty percent of the fair market value
22 of land or interest in land that is conveyed for the purpose of
23 open space, natural resource or biodiversity conservation,
24 agricultural preservation or watershed or historic preservation
25 as an unconditional donation in perpetuity by the landowner or

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1 taxpayer to a public or private conservation agency eligible to
2 hold the land and interests therein for conservation or
3 preservation purposes. The fair market value of qualified
4 donations made pursuant to this section shall be substantiated
5 by a "qualified appraisal" prepared by a "qualified appraiser",
6 as those terms are defined under applicable federal laws and
7 regulations governing charitable contributions.

8 B. The amount of the credit that may be claimed by
9 a taxpayer shall not exceed one hundred thousand dollars
10 (\$100,000) for a conveyance made prior to January 1, 2008 and
11 shall not exceed two hundred fifty thousand dollars (\$250,000)
12 for a conveyance made on or after that date. In addition, in a
13 taxable year, the credit used may not exceed the amount of
14 corporate income tax otherwise due. A portion of the credit
15 that is unused in a taxable year may be carried over for a
16 maximum of twenty consecutive taxable years following the
17 taxable year in which the credit originated until fully
18 expended. A taxpayer may claim only one tax credit per taxable
19 year.

20 C. Qualified donations shall include the conveyance
21 in perpetuity of a fee interest in real property or a less-
22 than-fee interest in real property, such as a conservation
23 restriction, preservation restriction, agricultural
24 preservation restriction or watershed preservation restriction,
25 pursuant to the Land Use Easement Act; provided that the less-

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1 than-fee interest qualifies as a charitable contribution
2 deduction under Section 170(h) of the Internal Revenue Code.
3 Dedications of land for open space for the purpose of
4 fulfilling density requirements to obtain subdivision or
5 building permits shall not be considered as qualified donations
6 pursuant to the Land Conservation Incentives Act.

7 D. Qualified donations shall be eligible for the
8 tax credit if the donations are made to the state of New
9 Mexico, a political subdivision thereof or a charitable
10 organization described in Section 501(c)(3) of the Internal
11 Revenue Code and that meets the requirements of Section
12 170(h)(3) of that code.

13 E. To be eligible for treatment as qualified
14 donations under this section, land or interests in lands must
15 be certified by the secretary of energy, minerals and natural
16 resources as fulfilling the purposes as set forth in Section
17 [~~5-9-2~~] 75-9-2 NMSA 1978. The use and protection of the lands,
18 or interests therein, for open space, natural area protection,
19 biodiversity habitat conservation, land preservation,
20 agricultural preservation, historic preservation or similar use
21 or purpose of the property shall be assured in perpetuity.

22 F. A taxpayer may apply for certification of
23 eligibility for the tax credit provided by this section from
24 the energy, minerals and natural resources department. If the
25 energy, minerals and natural resources department determines

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1 that the application meets the requirements of this section and
2 that the property conveyed will not adversely affect the
3 property rights of contiguous landowners, it shall issue a
4 certificate of eligibility to the taxpayer, which shall include
5 a calculation of the maximum amount of tax credit for which the
6 taxpayer would be eligible. The energy, minerals and natural
7 resources department may issue rules governing the procedure
8 for administering the provisions of this subsection.

9 G. To receive a credit pursuant to this section, a
10 person shall apply to the taxation and revenue department on
11 forms and in the manner prescribed by the department. The
12 application shall include a certificate of eligibility issued
13 by the energy, minerals and natural resources department
14 pursuant to Subsection F of this section. If all of the
15 requirements of this section have been complied with, the
16 taxation and revenue department shall issue to the applicant a
17 document granting the tax credit. The document shall be
18 numbered for identification and declare its date of issuance
19 and the amount of the tax credit allowed for the qualified
20 donation made pursuant to this section.

21 H. The tax credit represented by a document issued
22 pursuant to Subsection G of this section for a conveyance made
23 on or after January 1, 2008, or an increment of that tax
24 credit, may be sold, exchanged or otherwise transferred and may
25 be carried forward for a period of twenty taxable years

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1 following the taxable year in which the credit originated until
2 fully expended. A tax credit or increment of a tax credit may
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4 taxpayer. A taxpayer to whom a credit has been transferred may
5 use the credit for the taxable year in which the transfer
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12 qualified intermediary shall, by means of a sworn notarized
13 statement, notify the taxation and revenue department of the
14 transfer and of the date of the transfer within ten days of the
15 transfer. Credits shall only be transferred in increments of
16 ten thousand dollars (\$10,000) or more. The qualified
17 intermediary shall keep an account of the credits and have the
18 authority to issue sub-numbers registered with the taxation and
19 revenue department and traceable to the original credit.

20 J. If a charitable deduction is claimed on the
21 taxpayer's federal income tax for any contribution for which
22 the credit provided by this section is claimed, the taxpayer's
23 itemized deductions for New Mexico income tax shall be reduced
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25 determine the New Mexico taxable income of the taxpayer.

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K. For the purposes of this section:

(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and

(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, a land grant-merced controlled and governed as a political subdivision of the state or a trust."